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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH,)	
)	MEMORANDUM IN OPPOSITION TO
Plaintiff,)	DEFENDANT'S MOTION TO STAY
)	MINUTE ENTRY ORDER
-vs-)	REGARDING MEDICATION
)	
WANDA EILEEN BARZEE,)	Case No. 031901886
)	
Defendant.)	Judge JUDITH S. H. ATHERTON

Plaintiff, State of Utah, by and through Lohra L. Miller, District Attorney for Salt Lake County, and Alicia H. Cook, Deputy District Attorney, respectfully submits this memorandum in opposition to Defendant's motion to stay the Court's order granting the State's petition for involuntary medication.

I. DEFENDANT'S REQUEST FOR A STAY SHOULD BE DENIED.

Defendant's request for a stay of the Court's February 8th, 2008 order should be denied because there are no grounds for granting the motion. Defendant's motion is based on Defendant's intent to file a petition for writ of certiorari with the United States Supreme Court. The likelihood, however, of such a petition being granted is low. "A

petition for a writ of certiorari will be granted only for compelling reasons.” U.S.Sup.Ct. Rule 10, 28 U.S.C.A.. The United States Supreme Court will generally only review the decision of a state court if that court has decided an important federal question in a way that conflicts with another state court or a federal appellate court, or if a state court has decided an important federal question that has not been, but should be, addressed by the U.S. Supreme Court. *Id.* Furthermore, “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *Id.*

The instant case does not present any important federal questions that have been undecided by the United States Supreme Court or that have been decided in a way that conflicts with another court. The question of whether a defendant can be involuntarily medicated for the purpose of competency restoration has been answered by the United States Supreme Court in *Sell vs. United States*, 539 U.S. 166 (2003), and the considerations and standards for issuing such an order have been enunciated in that case as well. The only possible basis for a petition for a writ of certiorari that can be raised by Defendant therefore falls into the category of “erroneous factual findings or the misapplication of a properly stated rule of law,” and is very unlikely to be granted.

In her motion, Defendant states that the stay of the Court’s June 21st, 2006, order for medication was stipulated to by all parties. The State concedes that it agreed to the stay of the June 21st order, but this agreement extended only to staying proceedings while Defendant’s appeal of the June 21st order was pending before the Utah Supreme Court. The Supreme Court has now upheld the medication order, and the prior stipulation ended

with the issuance of that decision. The State did not agree to a stay pending an appeal to the United States Supreme Court, or any other appeals that might now occur.

Defendant has also requested a hearing to address her current medical status, the State Hospital's proposed treatment plan, available medications, and other unidentified factors. Defendant has provided no information to suggest that her clinical status, particularly her diagnosis, has changed, and has not provided any information to suggest that any treatments have developed since the mediation hearing that would warrant re-examination of the Court's order. The mere fact that time has elapsed since the Court ordered medication should not be seen as a reason to forestall the order, particularly where such a delay is the inevitable result of Defendant's appeal.

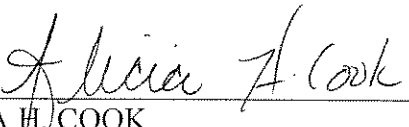
CONCLUSION

Defendant has requested the stay of a lawful proceeding ordered by this Court and upheld by the Utah Supreme Court, without any basis to believe that her petition to the United States Supreme Court will result in a reversal of those decisions. Therefore, Defendant's request for a stay should be DENIED.

RESPECTFULLY SUBMITTED this 6th day of March, 2008.

LOHRA L. MILLER
District Attorney for Salt Lake County

ALICIA H. COOK
Deputy District Attorney
Attorney for the State of Utah

By: 
ALICIA H. COOK
Deputy District Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing State's Memorandum in Opposition to Defendant's Motion to Stay Minute Entry Order Regarding Medication was delivered to SCOTT WILLIAMS and DAVID FINLAYSON, Attorneys for the Defendant, WANDA EILEEN BARZEE at 43 East 400 South, Salt Lake City, UT 84111 on the 6th day of March, 2008.

Alicia Hawk